Script for Inns of Court April 14, 2015

Tom: Introduction - Introduce players:

Drita: IRS manager

Starling: IRS special counsel

Charles: DOJ manager

**Drita:** Good morning, Charles, thanks for walking across the street from the Tax Division to the IRS building. I don’t know if you’ve met Starling, one of our special counsel working on FBAR matters. We should get started. *(Everyone Shuffling Papers).* I know I have our memo here somewhere.

**Starling:** Here it is. (*holding up memo)* “Training videos shall not use intergalactic themes. List of acceptable themes includes …” No. Sorry. This is an internal memo.

**Charles:** I got it. I got it. Leave it to the Justice Department to have the good judgment to come prepared *(reading)* “Department attorneys shall hereafter make every practicable effort to refrain from frequenting prostitutes.” Oh, sorry, I guess that’s the wrong one too.

**Drita:** I guess folks in both of our buildings will now have to find new hobbies. But I think we can get by this afternoon without a memo. Thanks, Charles, for taking the time to meet with us today.  We really wanted your input on a few FBAR cases we are thinking about referring for collection.  There are some tricky issues and we all have limited resources, so we wanted to get the Tax Division’s input before we move forward. We have a few matters still hanging around from the UBS tax treaty production, as well as some more current cases that we’ve picked up on quiet disclosures and some improper streamlined filings.

**Charles**:  Sure of course. But what are those. I thought we were here to talk about FBARs.

**Starling:** Well you know that even though we are still working UBS treaty cases as well as other foreign banks, more than 50,000 people have entered the IRS’s voluntary disclosure program. But some taxpayers don’t want to pay a 27 percent penalty in the disclosure program. They have made what we call a quiet disclosure where they quietly file amended tax returns and delinquent FBARs and hope we don’t notice. They don’t get any protection from criminal prosecution, but they also don’t pay the 27 percent penalty.

**Charles:** That sounds like a better deal than OVDI.

**Starling:** Only if they haven’t acted willfully for the purposes of the FBAR penalty. The IRS looks at delinquent FBARs and amended returns and tries to determine if a willful or non-willful FBAR penalty should be imposed.

**Drita**: And last June the IRS expanded its Streamlined program for taxpayers with foreign bank accounts who believe they have not acted willfully. But some of those taxpayers are willful, so we have an expanding number of cases under review.

**Charles:** You mentioned UBS. That was a long time ago. How can we still have any open cases? Section 6501 of the Internal Revenue Code has a general 3 year limitations period.

**Starling:** The Internal Revenue Code is not applicable here. FBARs are in Title 31, and Section 5321 provides for a 6 year limitations period for making an assessment.

**Drita:** And after the assessment has been made, if the accountholder does not pay the assessment, we then have 2 years to refer the case to you to file suit and begin collection. So for taxpayers with accounts in 2006, the FBAR would have been due on June 30, 2007, and the assessment must have been made by June 30, 2013. That means we have cases from 2006 that can still be referred to the Tax Division for collection.

**Charles:** 2006. Oh the good ole days, when the good folks in this building could still command the Starship Enterprise, and when over at our building we could … Well, where were we.

**Drita:**  Let’s jump into our cases. Our first case, we will call the taxpayer Jane Smith, she lives in Asia, and we assessed a $10,000 non-wilfull penalty against her 22 months ago.

**Charles:** I guess your revenue officers have a tough time serving levies.

**Starling**: Title 31 doesn’t allow our revenue officers to serve title 26 levies. For the most part, collection is done by a different part of Treasury. They generally don’t have as powerful of collection tools as we have under the Internal Revenue Code. They can collect pretty easily by offset, such as holding tax refunds. But I’m not sure how much more than that they really do.

**Charles:** Well they really can’t get much done in two years then, can they?

**Starling:** That’s the interesting thing. Section 3716 of Title 31 has no collection limitations period. Treasury can offset forever. It is only if we want to bring a collection action in court that we have a 2 year limitations period.

**Charles:** Well, if she lives in Asia, there probably aren’t a lot of offsets available. What assets does she have in the US?

**Starling:** None.

**Charles:**  Well, you could refer the case to us, but we would have to act fast because I assume the two-year period expires before June 30, in about 6 weeks. But what would a judgment really do for us at this point if there are no assets? It seems like a lot of work on a small case. If she moves back to the US in ten years, you are saying that Treasury will still be able to make offsets?

**Drita:**  Yes. I guess it wouldn't make sense to refer that case to you then, would it.

I think this second case is a little more of a close call- Joe Schmoe resides in the US and we do believe he has assets here as well.  We assessed a $30,000 non-wilfulness penalty against him.  His last two tax refunds have been offset. We need to make a decision about whether to bring an action because the two year statute is running.

**Charles:** That is trickier because he is living here and has assets. We would most likely be able to collect on a judgment. But it’s still a relatively small amount of money and it would cost a pretty penny to prep and bring an action to reduce assessment to judgment. Are there any other reasons to bring a court action? Are you looking to publicize non-willful cases.

**Drita:** No, we have a few pending and it is really just a collection matter. I think it may make sense to keep us in the unlimited statute then and just wait to collect via offset.

**Starling:** Ok, these last two cases are bigger cases involving the willful failure to file FBARs. In the first one, we assessed a $500,0000 penalty three years ago. But the taxpayer has been residing outside of the United States for more than 6 months, in fact, for more than two years.

**Charles:** So 6503(c) extends the period?

**Drita:** Oh my, it doesn’t. Title 31 does not contain a similar tolling of the limitations period. Looks like we don't have the option to bring a civil action here but we’ll have to rely on offsets.

**Charles:** May he live long and prosper.

**Drita:** And continue to overpay his taxes.

**Starling:** The last one is has a $1,000,000 willfulness penalty involving an assessment for multiple years and it involves a high profile taxpayer living in California. We’ve just referred it to Treasury for collection since it was only recently assessed. He has already told us that he intends to contest the penalty. We still have 18 months on the collection statute, but we wanted to let you know that a big one was in the pipeline.

**Charles:** Well, you should send us this one as soon as possible. We need more powerful collection tools. Even though the Title 31 regulations call for an agency to transfer the matter to Treasury for collection if the accountholder has not made a voluntary payment, there is no requirement to do that if the case is instead referred to Justice. Since we are probably dealing with some old years, we probably also need to get moving on this sooner rather than later.

**Drita:** Thanks for your help, we will get that one to you right away.